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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/908,896 08/08/97 HUNSBERGER

D 64677

MM42/0920

LEYDIG VOIT AND MAYER LTD  
TWO PRUDENTIAL PLAZA SUITE 4900  
180 NORTH STETSON  
CHICAGO IL 60601-6780

EXAMINER

ASHTON, W

ART UNIT	PAPER NUMBER
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2837

6

DATE MAILED: 09/20/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>08/908,896</b>	Applicant(s) <b>Dale Hunsberger et al.</b>
	Examiner <b>Wesley Ashton</b>	Group Art Unit <b>2837</b>

Responsive to communication(s) filed on \_\_\_\_\_.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-19 is/are pending in the application.

Of the above, claim(s) 16-19 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-15 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 and 3

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15, drawn to a "sound attenuating motor end shield," classified in class 181, subclass 198.
  - II. Claims 16-19, drawn to the "method of assembling an end shield to a hydraulic pump-motor," classified in class 29, subclass 407.01.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions of Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed could be used for assembling a sound attenuated housing for a "leaf blower assembly," or a "hair dryer," or a "kitchen blender," or other related apparatuses.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Andrew Heinich, Register Number 43666, (815)963-7661, on September 7, 1999 a provisional election was made with traverse to prosecute

the invention of Group I, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

*Priority*

6. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged wherein the provisional application 60/024,014 is the priority document.

*Information Disclosure Statement*

7. The information disclosure statements, filed on November 4, 1997 and December 16, 1997 respectively are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

*Specification*

8. The Applicant's attention is directed to the following:

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- a. Page 9, line 24, "ring 64" should be --ring 80--.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-10, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 and claim 3 are rendered vague and indefinite by the recitation in line 7 and line 4 respectively of "the motor housing" in line 7 because it is unclear if the "motor housing" is the "housing" for the "hydraulic pump-motor" or if the "motor housing" is a separate "housing" for enclosing only the "motor."

11. Claims 12 and 13 are rendered vague and indefinite by the recitation of "the cast iron end plate" in lines 2-3 and "the plastic end plate" in lines 2-3 respectively because there is insufficient antecedent basis in these claims to support the recitation of these limitations. Furthermore, the "end plate" is a feature directed to the embodiments illustrated in Figures 2-9, but the "'substantial mass" (40) is a feature directed to the embodiment of Figure 1; therefore, the recitation of the "end plate" and the "substantial mass" as features in the same claim lends to confusion.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Aller (3837767). As recited in claim 11, Aller discloses in Figures 1, 2 and 3 a "hydraulic pump-motor" (11) comprising a "housing" (19) enclosing a "motor" (17) mechanically linked to a "pump" formed by "base" (59), "impeller" (13) and portion of the "housing" (19); the "housing" (19) having a "substantially cylindrical shape;" the "pump" closing "one open end" of the "housing" (19); and "an end shield" (21 and 23) closing "an end of the housing opposite the pump" wherein the "end shield" (21 and 23) is manufactured from a "sound attenuating material" such as "plastic" (column 5, lines 13-21).

14. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Schirmer (2190246). As recited in claim 11, Schirmer discloses in Figures 1 and 2 a "hydraulic pump-motor" as shown comprising a "housing" (2) enclosing a "motor" (26) mechanically linked to a "pump" (14); the "housing" (2) having a "substantially cylindrical shape;" the "pump" (14) closing "one open end" of the "housing" (2); and "an end shield" (2') closing "an end of the housing opposite the pump" wherein the "end shield" (2') is manufactured from a "sound attenuating material." It

is noted that Schirmer does not explicitly disclose that the “end shield” (2') is manufactured from a “sound attenuating material;” however, it would be evident to one of ordinary skill in the art that inherently the “material” would be a “sound attenuating material” because “housings” are typically made from metal or plastic, both of which are “sound attenuating materials.”

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aller in view of Lauer et al. (2139370). As recited in claim 1, Aller discloses in Figures 1, 2 and 3 an “end shield” (21 and 23) for a “hydraulic pump-motor” (11) of the type having a “motor” (17) mechanically linked to a “pump” formed by “base” (59), “impeller” (13) and portion of the “housing” (19), and a “housing” (19) surrounding the “pump” and the “motor” (17) and having “first and second open ends;” the “pump” closing the “first open end” and the “end shield” (21 and 23) closing the “second open end” of the “housing” (19), the “end shield” (21 and 23) comprising an a “annular ring” (21) secured to the “housing” (19), (column 4, lines 44-48), and an “end plate” (23) secured to the “annular ring” (21) and “substantially closing the second open end.” Furthermore, Aller discloses that the “housing” (19) could be made of “corrosion resistant

metallic alloys" (column 3, lines 24-26), and it would be evident to one of ordinary skill in the art to make the "annular ring" out of the same "metal" as the "housing" to facilitate the "welding" of the "annular ring" to the "housing" (column 4, lines 44-49). In addition, Aller discloses that the "end plate" (23) is made of "plastic" because "plastic" provides "sufficient flexure" for the "leg portions" (89) to optimally clamp to the "metallic annular ring" (column 5, lines 13-21).

However, Aller does not disclose that the "ring" is attached via "bolts" securing the "motor" to the "housing" as recited in lines 8-9 of claim 1. Lauer et al. disclose in Figure 3 an "end shield" (53) for a "hydraulic pump-motor" (27) including "bolts" (69) securing the "end shield" (53) and the "motor" (57) to the "housing" (51). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, having the teachings of Lauer et al. before him, to apply the feature of "bolts" securing the "end shield" and the "motor" to the "housing" as taught by Lauer et al. to the "end shield" and "pump-motor" disclosed by Aller because the combination of the art efficiently secures both the "end shield" and the "motor" to the "housing," thereby permitting a convenient removable access to the "motor" for maintenance. Furthermore, it would be evident to one of ordinary skill in the art that the "bolts" securing the "end shield" to the "housing" disclosed by the combination of Aller and Lauer et al. would be secured to the "annular ring" because the "annular ring" is the component of the "end shield" secured to the "housing" as previously disclosed by Aller.

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17. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aller in view of Lauer et al. as applied to claim 1 above, and further in view of Carey (5327036). As recited in claim 3, Aller discloses in Figure 3 that the “annular ring” (21) has an “outer circumference;” however, neither Aller nor Lauer et al. disclose the “plurality of downwardly depending fingers” as recited in lines 3-4 of claim 3. Carey discloses in Figure 1 an “end shield” (17) for a “motor” (14) that attaches to the “housing” (18) and has a “plurality of downwardly depending fingers” (unlabeled) as shown. Furthermore, it would be suggested to one of ordinary skill in the art that from Figure 1 the “plurality of downwardly depending fingers” are positioned to “frictionally engage” an “inner surface” of the “motor housing” (12). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, having the teachings of Carey before him, to apply the feature of the “plurality of downwardly depending fingers” as taught by Carey to the “end shield” disclosed by the combination of Aller and Lauer et al. because the combination of the art provides a means for conveniently and accurately aligning the “end shield” to the “motor housing.” Furthermore, it would be evident to one of ordinary skill in the art that the “plurality of fingers” of the “end shield” disclosed by the combination of Aller, Lauer et al. and Carey would be a feature of the “annular ring” because it is the “annular ring” that attaches to the “housing.”

18. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schirmer in view of Laing (3824035). Schirmer discloses a “hydraulic pump-motor” as

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previously discussed above, and additionally discloses in Figure 1 that the “end shield” (2') has a “substantial mass” that is “disposed centrally and extending into” the “housing” (2). However, Schirmer does not disclose that the “sound attenuating material is cast iron” as recited in line 2 of claim 12. Laing discloses that the “housing” for a “hydraulic pump-motor” may be made of “cast iron” (column 1, lines 4-23). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, having the teachings of Laing before him, to apply the feature of the “housing” being made of “cast iron” to the “housing” of the “hydraulic pump-motor” disclosed by Schirmer because the combination of the art utilizes a venerated, reliable, durable and commercially available material for making a “hydraulic pump-motor housing.” Furthermore, it would be suggested to one of ordinary skill in the art that the “end shield” would preferably be made of the same “cast iron” as the “housing” so as to avoid uneven wear between components of the frame for “housing” the motor and pump unit. Lastly, it is noted that the “cast iron” is a “sound attenuating material.”

As recited in claim 13, which depends upon claim 11, Laing discloses that the “housing” is preferably made of “plastic” which is a “low cost material” (column 2, lines 20-36). Furthermore, it would be suggested to one of ordinary skill in the art that the “end shield” would preferably be made of the same “plastic” as the “housing” so as to avoid uneven wear between components of the frame for “housing” the motor and pump unit. Lastly, it is noted that the “plastic” is a “sound attenuating material.”

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19. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aller.

As recited in claim 14 and as previously discussed, Aller discloses a “hydraulic pump-motor; furthermore, Aller discloses that the “end shield” (21 and 23) comprises an a “annular ring” (21) rigidly attached to the “housing” (19), (column 4, lines 44-48), and an “end plate” (23) attached to the “annular ring” (21). Furthermore, Aller discloses that the “housing” (19) could be made of “corrosion resistant metallic alloys” (column 3, lines 24-26), and it would be evident to one of ordinary skill in the art to make the “annular ring” out of the same “metal” as the “housing” to facilitate the “welding” of the “annular ring” to the “housing” (column 4, lines 44-49). In addition, Aller discloses that the “end plate” (23) is made of “plastic” because “plastic” provides “sufficient flexure” for the “leg portions” (89) to optimally clamp to the “metallic annular ring” (column 5, lines 13-21).

As recited in claim 15, which depends upon claim 11, Aller discloses that the “housing” (19) could be made of “plastic” because “plastic” is cheaper than “metallic alloys” (column 3, lines 25-29). Furthermore, it would be evident to one of ordinary skill in the art to make the “annular ring” out of the same “plastic” as the “housing” to facilitate the “welding” of the “annular ring” to the “housing” (column 4, lines 44-49).

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***Allowable Subject Matter***

20. Claims 2 and 4-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Prior Art***

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- A. Martin, Sr. (5605448) discloses an "AC fuel pump."
- B. Niemiec et al. (5354182) disclose "hydraulic-pump assembly."
- C. Myers (3407739) discloses a "pump housing and motor unit."
- D. Soulsby et al. (4064903) disclose a "noise enclosure for hydraulic valve."
- E. Wahlmark (2309683) discloses a "pumping unit."
- F. Sleeper (3960237) discloses a "sound reducing enclosure."
- G. Wenz (4661731) discloses a "shield for fan motor."
- H. Dochterman (3500083) discloses a "motor mounting system."
- I. Lakin (4644204) discloses a "motor housing and end shield mount."
- J. Stone (3463949) discloses a "end frame attachment" for motor.
- K. Japanese Patent (59-15634) discloses a "cover for power unit."
- L. WIPO (92/15785) discloses sound attenuated "pump housing."

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22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wesley Ashton whose telephone number is (703)306-5486. The examiner can normally be reached on Monday-Thursday from 0800 to 1600.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi, can be reached on (703) 308-3370. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3431.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

### *Summary*

23. In summary, claims 1-15 are rejected.

24. Claims 16-19 are withdrawn from further consideration, being directed to a non-elected species of invention.

WSA  
Wesley S. Ashton  
13 SEP 99  
Patent Examiner

  
ROBERT E. NAPPI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800